Love Culture Inc. *and* Kiara Durham. Case 18–CA–132084

July 13, 2015

DECISION AND ORDER

BY MEMBERS HIROZAWA, JOHNSON, AND MCFERRAN

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the consolidated complaint and compliance specification. Upon a charge filed by employee Kiara Durham on July 3, 2014, the General Counsel issued a complaint against Love Culture Inc. (the Respondent) on August 1, 2014, and issued an order consolidating complaint with compliance specification, and compliance specification against the Respondent on August 19, 2014. The Respondent failed to file any answer.

On September 11, 2014, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on September 15, 2014, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. Similarly, Section 102.56 of the Board's Rules and Regulations provides that the allegations in a compliance specification will be taken as true if an answer is not filed within 21 days from service of the compliance specification. In addition, the consolidated complaint and compliance specification affirmatively stated that unless an answer was received by September 9, 2014, the Board may find, pursuant to a motion for default judgment, that the allegations in the consolidated complaint and compliance specification are true. Further, the General Counsel attached to its motion a copy of an email dated August 18, 2014, from the Board agent to the Respondent's attorney notifying the Respondent that unless an answer was received by August 22, 2014, a motion for default judgment would be filed.[1] Nonetheless, the Respondent failed to file an answer.

Accordingly, in the absence of good cause being shown for the failure to file an answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a California corporation with an office and place of business in St. Louis Park, Minnesota (the Respondent's St. Louis Park store), and has been engaged in the retail sale of clothing and related products.

Since about July 16, 2014, the Respondent has been a debtor-in-possession with full authority to continue its operations and exercise all powers necessary to administer its business.[2]

In conducting its operations during the calendar year ending December 31, 2013, the Respondent purchased and received goods valued in excess of $50,000 at its St. Louis Park, Minnesota store directly from points located outside the State of Minnesota. During the same calendar year, the Respondent derived gross revenues in excess of $500,000. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Crshanna Rodgers	- Store Manager
Angel Lee	- District Manager
Mary Vo	- Human Resources Manager

The Respondent engaged in the following conduct:

[1] Exh. 7. Although the email contains a typographical error, referring at one point to a deadline of August 15, 2014, it is clear that the intended deadline was August 22, 2014, as stated elsewhere in the email.

[2] It is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. See, e.g., *Cardinal Services*, 295 NLRB 933, 933 fn. 2 (1989), and cases cited therein. Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See id., and cases cited therein; *NLRB v. 15th Avenue Iron Works, Inc.,* 964 F.2d 1336, 1337 (2d Cir. 1992) (per curiam). Accord *Ahrens Aircraft, Inc. v. NLRB,* 703 F.2d 23, 24 (1st Cir. 1983).

1. At all material times, the Respondent has maintained and enforced at its St. Louis Park store, and at other locations not presently known, a confidentiality rule prohibiting employees from discussing wage rates with each other.

2. About February 25, 2014, the Respondent, by Store Manager Crshanna Rodgers, at the Respondent's St. Louis Park store, threatened an employee by stating that it was trying to discharge another employee for discussing wage rates with employees.

3. About March 25, 2014, the Respondent, by its Store Manager Crshanna Rodgers, at the Respondent's St. Louis Park store, threatened an employee by stating that the employee was discharged for violating the Respondent's confidentiality rule by discussing wages with other employees.

4. About March 26, 2014, the Respondent, by its District Manager Angel Lee, in a telephone conversation with an employee, threatened the employee by stating that the employee was discharged for violating the Respondent's confidentiality rule by discussing wages with other employees.

5. About March 26, 2014, the Respondent, by Human Resources Manager Mary Vo, in a telephone conversation with an employee, threatened the employee by stating that the employee was discharged for violating the Respondent's confidentiality rule by discussing wages with other employees.

6. About March 23, 2014, the Respondent's employees, including Kiara Durham, engaged in concerted activities with each other for the purposes of mutual aid and protection by discussing wage rates paid by the Respondent to its employees.

7. About March 25, 2014, the Respondent discharged Kiara Durham.

The Respondent engaged in the conduct described above in paragraph 7 because Kiara Durham violated the confidentiality rule described above in paragraph 1; because the Respondent's employees, including Kiara Durham, engaged in the conduct described above in paragraph 6; and/or because the Respondent believed Kiara Durham disclosed her wage rate to other employees, and to discourage employees from engaging in these or other concerted activities.

CONCLUSION OF LAW

By the conduct described in paragraphs 1 through 5, and 7, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) by maintaining and enforcing a confidentiality rule prohibiting employees from discussing wage rates with each other, we shall order the Respondent to rescind the unlawful rule and to advise its employees in writing of such rescission.

In addition, having found that the Respondent has violated Section 8(a)(1) by discharging Kiara Durham for violating the above-described rule, we shall order the Respondent to offer Durham full reinstatement to her former position or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed. We shall further order the Respondent to make Durham whole for any loss of earnings and other benefits suffered as a result of its discrimination against her by paying her the amount set forth in the compliance specification's Appendix A, attached to this decision, plus additional backpay that may accrue in the absence of a valid offer of reinstatement, with interest accrued to the date of payment, as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), and minus tax withholdings required by Federal and State laws. The Respondent shall be required to compensate Durham for any adverse tax consequences of receiving a lump-sum backpay award and to file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters. *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014).

Finally, we shall order the Respondent to remove from its files any reference to the unlawful discharge of Durham, and to notify her in writing that this has been done and that the unlawful discharge will not be used against her in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Love Culture Inc., St. Louis Park, Minnesota, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining and enforcing a rule prohibiting employees from discussing wage rates with each other.

(b) Threatening employees with discharge if they discuss their wage rates with each other.

(c) Discharging employees because they violate a confidentiality rule prohibiting them from discussing wages with other employees, or because they have discussed wage rates with other employees, and/or because the Respondent believes that employees have disclosed their wage rates to other employees.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the unlawful confidentiality policy prohibiting employees from discussing wage rates with each other and furnish employees with written notice that this rule has been rescinded.

(b) Within 14 days from the date of this Order, offer Kiara Durham full reinstatement to her former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(c) Make Kiara Durham whole for any loss of earnings and benefits suffered as a result of the discrimination against her, by paying her the amount set forth in Appendix A attached to this decision, plus additional backpay that may accrue in the absence of a valid offer of reinstatement, plus interest accrued to the date of payment, and minus tax withholdings required by Federal and State laws, as set forth in the remedy section of this decision. As of August 15, 2014, the backpay amount due was $2874.[3]

(d) Compensate Durham for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

(e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of Durham, and within 3 days thereafter notify her in writing that this has been done and that the discharge will not be used against her in any way.

(f) Preserve and, within 14 days of a request or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its facility in St. Louis Park, Minnesota, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 25, 2014.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 18 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 13, 2015

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Kent Y. Hirozawa, Member

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Harry I. Johnson, III, Member

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Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[3] As set forth in the compliance specification, Durham's backpay period continues until she receives a valid offer of reinstatement; the backpay amount listed above has been calculated through August 15, 2014, in order to ascertain a definitive backpay period for purposes of this proceeding.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain or enforce any rule prohibiting employees from discussing wage rates with each other.

WE WILL NOT threaten our employees with discharge if they disclose their wage rates or discuss their wage rates with each other.

WE WILL NOT discharge our employees if they disclose their wage rates or discuss their wage rates with each other.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL make whole employee Kiara Durham for any loss of earnings and other benefits suffered as a result of our discrimination against her, plus additional backpay that may accrue in the absence of a valid offer of reinstatement, plus interest accrued to the date of payment and minus tax withholdings required by Federal and State laws.

WE WILL compensate employee Kiara Durham for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Kiara Durham, and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that the unlawful discharge will not be used against her in any way.

LOVE CULTURE INC.

The Board's decision can be found at www.nlrb.gov/case/18-CA-132084 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

APPENDIX A

CLAIMANT: Kiara Durham

BACKPAY PERIOD: March 25, 2014— to date (calculated through August 15, 2014)

Year	Qtr.	Gross Backpay	Net Interim Earnings	Net Backpay
2014	1st	341	0	341
2014	2nd	4,433	1,900	2,533
2014	3rd	2,387	4,733	0
Totals:		$7,161	$6,633	$2,874

Notes:

All amounts are rounded to the nearest dollar.

Durham's gross backpay is based on her working an average of 31 hours per week and earning $11 per hour worked for Respondent, which is $341 weekly, or $4,433 per quarter.

Durham has not been offered reinstatement. Therefore, the backpay period is ongoing.

Durham began her interim employment at TownePlace Suites on May 14. 2014, where her average weekly earnings were $440 after her initial training period during which she earned $168 and $210 for the first two 2 weeks, respectively. Durham began interim employment with Health Fitness Corporation on June 30, 2014, where her average weekly earnings are $487.60. Subsequently, Durham ended her employment with TownePlace Suites on July 21, 2014.

Durham submitted public transportation expenses for the period during which she was searching for work. She incurred $350 in transportation expenses during this period,

which is reduced by $112, her transportation expenses if she had continued to be employed at Love Culture Inc. Thus, her 2nd Quarter 2014 interim earnings were reduced by $238.

Net Interim earnings equals interim earnings minus expenses.